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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,771	11/09/2001	Akito Nakatsuka	723-1211	5627
27562	7590	06/25/2004	EXAMINER	
NIXON & VANDERHYE, P.C. 1100 N. GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201			ENATSKY, AARON L	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/986,771	NAKATSUKA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Aaron L Enatsky	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-14 and 16-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/30/02</u> . | 6) <input type="checkbox"/> Other: _____  |

*Handwritten initials*

## **DETAILED ACTION**

### ***Response to Amendment***

Examiner acknowledges receipt of amendment on 04/01/04 in response to a restriction requirement. However, Applicant has not provided a proper response to the restriction requirement in that, Applicant stated that both species were provided in the same claims. Applicant did not properly differentiate the species requirement, however it is understood by Examiner that Applicant elected the species of Figure 12. Therefore, Examiner believes that claims 1-6, 8-11, 12-14, and 16-26 should be examined, and claims 7 and 15 are withdrawn from examination as directed selecting music data in response to game synchronization.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim appears to have repetitive language or is written in such a manner that Examiner cannot determine the scope of the claim requirements. Examiner is interpreting the claim as requiring a determination of whether a player provided inputs within a predetermined time.

Claims 9-11 recites the limitation "the number of points" in lines 2, 2, and 6 respectively. There is insufficient antecedent basis for this limitation in the claim. Applicant has not set forth any indication that points were part of the evaluation means. Thus, without such information, the points have no basis to added to preexisting points as indicated in the claims.

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***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 14-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant has claimed a program, which is a mere manipulation of abstract ideas, Schrader, 22 F.3d at 292-93, 30 USPQ2d at 1457-58 and not patentable.

Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, “functional descriptive material” consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of “data structure” is “a physical or logical relationship among data elements, designed to support specific data manipulation functions.” The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) “Nonfunctional descriptive material” includes but is not limited to music, literary works and a compilation or mere arrangement of data. (MPEP 2601, Patentable Subject Matter, computer related inventions)

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 8-11, 12-14, and 16-26 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by US Patent No. 6,371,850 to Sonoda.

Sonoda describes a system and method for providing a competitive video game conducted between characters at networked game units (2:53-64). The system uses a plurality interconnected game units, wherein each game unit has a display screen and means for a player to control actions of an on screen game character (2:65-3:13). The system communication interface provides data sharing between game units, wherein a first set of data is associated with a first game machine and a second set of data is associated with a second game machine. During competition conditions the game data will be synchronized between the game units to allow for proper game play (3:14-47). The game units also have determination means for determining awarded game points earned during the game competition (3:48-67). In one embodiment the competition game is a fighting game wherein player timing within predetermined conditions determines game outcomes (10:6-19).

***Citation of Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Applicant is currently claiming cross-network game synchronization that is well represented in the field of network based twitch games, i.e. games requiring little to no latency so that the game can be played properly. A few of the many references are included below:

US Pat. No. 5,538,255 to Barker, remote game synchronization.

US Pat. No. 6,315,668 to Metke et al., game state synchronization of remotely located game units.

US Pat. No. 5,838,909 to Roy et al., reducing latency to allow for synchronized game play.

US Pat. No. 4,570,930 to Matheson, mitigating latency to allow for proper game play.

US Pat. No. 4,572,509 to Sitrick, network game play.

US Pat. No. 5,685,775 to Bakoglu et al., sequenced game data to synchronize game play.

US Pat. No. 5,899,810 to Smith, distributed game architecture to overcome system latency.

### ***Conclusion***

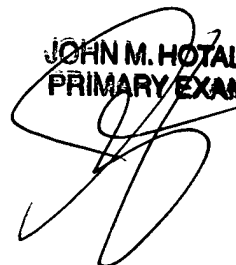
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron L Enatsky whose telephone number is 703-305-3525. The examiner can normally be reached on 8-6 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ALE

  
JOHN M. HOTALING, II  
PRIMARY EXAMINER